

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Section 124
Title 14, California Code of Regulations (CCR)
Re: California Halibut Trawl Grounds

- I. Date of Initial Statement of Reasons: February 11, 2008
- II. Date of Pre-Adoption Statement of Reasons: March 10, 2008
- III. Date of Final Statement of Reasons: April 25, 2008
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: December 6, 2007
Location: Sacramento, CA
 - (b) Discussion Hearing Date: March 7, 2008
Location: Stockton
 - (c) Adoption Hearing: Date: April 11, 2008
Location: Bodega Bay, CA
- V. Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

Action Taken

At the April 11th adoption hearing, the Commission took regulatory action to keep three of four areas (A, C and D) in the California Halibut Trawl Grounds open to trawling, consistent with its findings made on March 7. The Commission selected regulatory option 2, which provides the flexibility to keep any combination of the four areas open to bottom trawling.

At the Commission's March 7th hearing, the following motion was approved 3-1:

The Fish and Game Commission, pursuant to the provisions of Section 8495 of the Fish and Game Code, and to implement, interpret, or make specific sections of said code, hereby finds that the bottom trawl fishery

for halibut minimizes bycatch, is likely not damaging sea floor habitat, is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral or other biogenic habitats in the following grounds as designated in subsection 8495 (c)(1): a, c and d. The Commission will consider adoption of regulations to add Section 124, Title 14, CCR, at its April meeting.

The Findings made March 11 have been described by the Commission as follows:

The Commission has been diligent in its efforts to obtain the best available information about the halibut trawl fishery within the trawl grounds specified in Section 8495 of the Fish and Game Code. Including this meeting, the Commission has received public input on this matter and discussed it publicly at seven meetings, duly noticed and held throughout the state during 2007 and 2008. And based upon the record, which includes written comments from the public, oral presentations provided by the Department and a diverse group of stakeholders at these meetings, the Commission finds that the bottom trawl fishery for halibut minimizes the bycatch, is likely not damaging the sea floor habitat, and is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral or other biogenic habitats. And specifically, the Commission calls attention to the following factors related to each of the following grounds:

Grounds A is 90 percent soft bottom, 2 percent bycatch, and no kelp seen;

Grounds C is 97 percent soft bottom, 1 percent bycatch, and no kelp; and

Grounds D with 100 percent soft bottom, 8 percent bycatch, with no kelp evidenced.

Therefore, the Commission has determined that said designated grounds may remain open. The Commission directs its staff to complete the rulemaking actions related to addition of Section 124, Title 14: halibut trawling within specifically identified areas.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

A. Postcards:

The Commission received 12 identical postcards via U.S. mail in support of Option 1, which would keep all of the four areas open to trawling. The cards were each signed but the signatures were not legible. Each signatory indicated

that he or she was a seafood consumer that likes to buy fresh local halibut, and that closure of the trawl grounds would result in either no supply, or significant price increases for locally-caught halibut which would make the product no longer affordable for consumers.

Response: Comments noted. The Commission's findings are described above.

B. Letter from Santi Roberts and Jim Ayers, Oceana – March 31, 2008:

Oceana disagrees with the Commission's findings in accordance with Fish and Game Code §8495(c), and is concerned that the decision was based on an inaccurate, misinformed assumption that soft sediment communities are not impacted by bottom trawling and a misunderstanding of the Fish and Game Code's definition of "bycatch." Oceana strongly urges the Commission to reconsider the decision.

Response: Comments noted. The Commission's findings are described above.

C. Public Testimony at the April 11, 2008 Adoption Hearing:

The following speakers supported regulatory action that would keep three of the four areas open to halibut trawling, consistent with the findings made by the Commission on March 7 as described above.

1. Mike McCorkle
2. Gary Burke
3. Chris Miller
4. Bill Ward
5. Morgan Castignola

Response: Comments noted.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No reasonable alternatives were identified.

(b) No Change Alternative:

If the Commission does not make the requisite finding as described, and thus does not adopt the proposed regulations, the four previously described areas within the California Halibut Trawl Grounds will close pursuant to Subdivision 8495(c) of the Fish and Game Code.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

If the Commission makes the finding described herein and takes action to keep the areas open, there will be no negative economic impact to businesses, which are primarily fish businesses and owners, operators and crewmembers employed upon vessels holding a California Halibut Trawl Vessel Permit. If the Commission does not make the finding and the four areas close as required by the statute, the economic impacts would have been considered during the Legislative process associated with adoption of SB 1459 (Chapt. 721, Stats. 2004).

Additionally, as described above, the Department's report entitled "Information Concerning the California Halibut Trawl Fishery off Southern

California” includes updated discussion of estimated economic impacts of closing each of the four areas.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

Updated Informative Digest/Policy Statement Overview

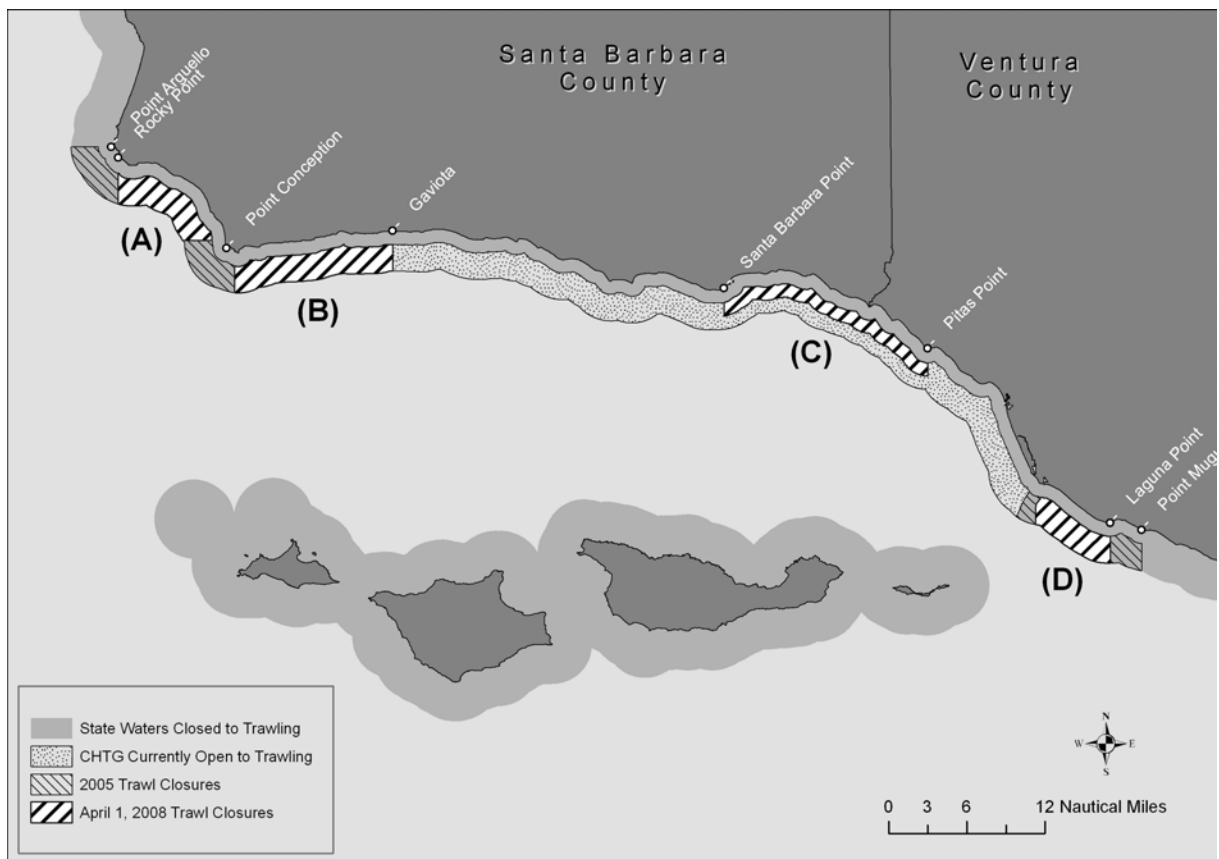
Section 8495 of the Fish and Game Code specifies certain state waters along the mainland shore between Point Arguello and Point Mugu as the California Halibut Trawl Grounds (CHTG). This area now encompasses the last remaining ocean waters of the state where commercial bottom trawl fishing activity is authorized. Generally speaking, state waters extend to three nautical miles from the mainland shore of California, and three nautical miles from the shore of California's coastal islands.

S.B. 1459 (Chapt. 721, Stats. 2004), which amended Section 8495, resulted in closure of about 13 percent of the CHTG, effective in 2005. The closures occurred in four specific areas surrounding Point Arguello, Point Conception, Hueneme Canyon and Point Mugu.

As part of that Legislative action, subdivision (c) of Section 8495 was added, which specifies that commencing April 1, 2008, four additional areas within the CHTG, amounting to about 42 percent of the remaining open area, will close unless the Fish and Game Commission (Commission) makes certain findings. A map of the CHTG, including the 2005 closures and the closures slated for April 2008, is provided below.

The four areas can be described generally as waters lying approximately between the following points:

- (A) Rocky Point to Point Conception; one to three miles from shore
- (B) Point Conception to Gaviota; one to three miles from shore
- (C) Santa Barbara Point to Pitas Point; one to two miles from shore
- (D) Hueneme Canyon to Laguna Point; one to three miles from shore



Subdivision (c) also specifies the findings to be made that would keep these four areas open, as follows:

“Commencing April 1, 2008, the following areas in the California halibut trawl grounds shall be closed to trawling, unless the commission finds that a bottom trawl fishery for halibut minimizes bycatch, is likely not damaging sea floor habitat, is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral, or other biogenic habitats: (2) In making the finding described in paragraph (1), the commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring those habitats is reasonably feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts.”

The Commission has taken testimony at recent discussion hearings and is considering all available information in its deliberations, and may determine that such findings are warranted for one or more of the four areas. If such findings are made, the Commission would subsequently take regulatory action at its April 11th meeting to keep one or more of the four areas open. This Initial Statement of Reasons has been prepared prior to the Commission making a determination on any findings in order to allow the Notice to appear in the California Regulatory Notice Register, initiating the 45-day public comment period as required by the Administrative Procedure Act. If no findings are made, no subsequent regulatory action would be necessary, and the areas would close as required by the statute.

Pursuant to Fish and Game Code Section 8496, the season for trawling in the California Halibut Trawl Grounds opens on June 16th, and runs through March 14 each year. Should the Commission make any findings at or before its April 11, 2008 meeting, it would be able to adopt regulations at that time to keep one or more of the areas open to fishing. Action to adopt on that date should allow adequate time for review of the file by the Office of Administrative Law prior to the June 16th season opener, thereby allowing any fishing activity to commence in these four areas without interruption.

Regulatory Options

During the discussion hearing on this issue at its February 7th meeting in San Diego, the Commission requested that it be provided the option to keep any combination of the four areas open to bottom trawling, allowing it to review data presented and make a determination on each area independently. The proposed regulatory language included with this Initial Statement of Reasons has been constructed accordingly.

Action Taken

At the April 11th adoption hearing, the Commission took regulatory action to keep three of four areas (A, C and D) in the California Halibut Trawl Grounds open to trawling, consistent with its findings made on March 7. The Commission selected regulatory option 2, which provides the flexibility to keep any combination of the four areas open to bottom trawling.

At the Commission's March 7th hearing, the following motion was approved 3-1:

The Fish and Game Commission, pursuant to the provisions of Section 8495 of the Fish and Game Code, and to implement, interpret, or make specific sections of said code, hereby finds that the bottom trawl fishery for halibut minimizes bycatch, is likely not damaging sea floor habit, is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral or other biogenic habitats in the following grounds as designated in subsection 8495 (c)(1): a, and/or b, and/or c and/or d. The Commission will consider adoption of regulations to add Section 124, Title 14, CCR, at its April meeting.

The Findings made March 11 have been described by the Commission as follows:

The Commission has been diligent in its efforts to obtain the best available information about the halibut bottom trawl fishery within the trawl grounds specified in Section 8495 of the Fish and Game Code. Including this

meeting, the Commission has received public input on this matter and discussed it publicly at seven meetings, duly noticed and held throughout the state during 2007 and 2008. Based upon the record, which includes written comments from the public, and oral presentations provided by the Department and diverse stakeholder groups at these meetings, the Commission finds that the bottom trawl fishery for halibut minimizes bycatch, is likely not damaging sea floor habitat, is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral or other biogenic habitats. Specifically, the Commission calls attention to the following factors related to each of the following grounds:

Grounds A, as it is comprised of 90 percent soft bottom, does not contain kelp habitat and has a bycatch rate* of approximately 2 percent.

Grounds C, as it is comprised of 97percent soft bottom, does not contain kelp habitat and has a bycatch rate* of approximately 1 percent.

Grounds D, as it is comprised of 100 percent soft bottom, does not contain kelp habitat and has a bycatch rate* of approximately 8 percent.

The Commission therefore has determined that said designated grounds may remain open. The Commission directs its staff to complete the rulemaking actions related to addition of Section 124, Title 14, CCR, Re: halibut trawling within specifically identified areas.

****Average percent discarded dead.***

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
ADDENDUM TO FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Section 124
Title 14, California Code of Regulations (CCR)
Re: California Halibut Trawl Grounds

I. Addendum to Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

Comment 1: Geoff Shester, Oceana, oral comments, March 7, 2008; Santi Roberts, oral comments, March 7, 2008; Jim Ayers, Oceana, Letters, March 5, and March 31, 2008: If you use the correct definition of bycatch, there is 271 percent bycatch.

Response 1: The Department's draft report to the Commission titled "Information Concerning the California Halibut Trawl Fishery off Southern California" dated January 15, 2008, contained detailed summarized results from the California halibut trawl ground bycatch study (Table 7, page 19). The Department defined bycatch according to Fish and Game Code which states, "Bycatch is defined as any fish or other marine life that are taken in a fishery but which are not the target of the fishery"(FGC §90.5) (Draft report page 20). By this definition, bycatch in the California Halibut Trawl Grounds (CHTG) study accounted for 73 percent of the total catch by weight (Draft report Table 7 page 19). The ratio of bycatch to retained California halibut was 2.7 lbs of bycatch for every 1 lb of California halibut.

Comment 2: Geoff Shester, Oceana, oral comments, March 7, 2008; and Jim Ayers, Oceana. Letter, March 5, 2008: The Department's report did not documented post-release mortality to support conclusion of the study.

Response 2: Estimating or quantifying post-release mortality of bycatch in the CHTG was beyond the scope of the collaborative bycatch study which involved California Sea Grant and the Southern California Trawlers Association. The scientific literature does indicate that bycatch post-release mortality occurs in trawl fisheries, however the Department did not speculate on the post-release survival of bycatch and reported the percentage of discards returned alive for non-target species in their draft report to the Commission (Table 7, page 19).

Comment 3: Tom Raftican, United Anglers, oral comments, March 7, 2008: Concerned that bycatch and discard rates in the Department's report to the Commission are not addressed.

Response 3: The Department's draft report to the Commission titled "Information Concerning the California Halibut Trawl Fishery off Southern California" dated January 15, 2008, contained detailed summarized results from the California halibut trawl ground bycatch study (Table 7, page 19). Additionally, a list of all species caught as bycatch (including the number and weight) during the study was included in the Department's draft report to the Commission (Appendices B and C, pages 32 and 34). Hastie (2005) reported only bycatch data for Federal groundfish, rockfish, and flatfish in the groundfish limited-entry trawl fishery targeting California halibut. These species groups were included in the comparison of the fisheries to make a reasonable bycatch comparison. The percentage of groundfish discarded in the federal limited-entry fishery (60 percent) and the CHTG fishery (74 percent) stated by United Anglers is correct and available in the Department's draft report to the Commission (Table 8, page 20). The percent of the total catch that was discarded as bycatch (all species including bat rays) was 61 percent in the CHTG bycatch study. While the percentage of groundfish discarded in the CHTG fishery was higher, the groundfish limited-entry trawl vessels caught 1.7 pounds of federally managed groundfish for every pound of retained California halibut, while CHTG vessels caught 0.28 pounds-per-pound of retained California halibut (Table 8, page 20).

Hastie, J. 2005. Summary of observed groundfish bycatch by groundfish limited-entry vessels targeting California halibut. National Marine Fisheries Service, Seattle, Washington.

Comment 4: Santi Roberts, Oceana, oral comments, March 7, 2008; Jim Ayers, Oceana, Letter, March 5, 2008: The Department did not conduct a study on habitat impacts caused by trawl gear.

Response 4: In Oceana's letter to the Commission dated, March 5, 2008, titled "Re: California Halibut Trawl Grounds," it states that videos taken by the Department provided evidence of trawling impacts on soft-bottom habitat. The purpose of our work was only to validate whether hard- or soft-bottom habitat occurred in the area described and not to determine trawl impacts to the habitat or the occurrence of soft-bottom infauna. The design and accomplishment of a study to quantify trawling impacts would have been a much greater undertaking than the limited remotely operated vehicle survey that the Department was able to conduct. At the Commission's April 2007 meeting, the Department indicated that a habitat and ecosystem impact study was prohibitive under the pending timeframe and resource constraints that the Department was operating under.

In the Department's draft report to the Commission titled "Information Concerning the California Halibut Trawl Fishery off Southern California" dated January 15, 2008, the Department indicated that few habitat impact studies have been undertaken off the west coast of the United States and provided an interpretation of these studies (Engel and Kvitek 1998, Hixon and Tissot 2007). The Department also indicated, to their knowledge as of the draft report date, that no studies were undertaken on the habitat

impacts of halibut trawl gear to the seafloor habitat in the CHTG. In addition, the Department reviewed the Environmental Impact Statement (EIS) for designating Essential Fish Habitat for the Pacific Coast groundfish fishery, which described general trawl gear impacts and recovery time for trawl gear impacts on estuarine, shelf, and slope habitats (NMFS 2005). The EIS indicates that the habitat impacts by bottom trawl gear in areas where California halibut trawling occurs is rated within the lowest sensitivity classification for impacts to seafloor habitat by bottom trawl gears.

Engel, J., and R. Kvitek. 1998. Effects of otter trawling on a benthic community in Monterey Bay National Marine Sanctuary. *Conservation Biology* 12:1204-1214.

Hixon, M. A., and B. N. Tissot. 2007. Comparison of trawled vs. untrawled mud seafloor assemblages of fishes and macroinvertebrates at Coquille Bank, Oregon. *Journal of Experimental Marine Biology and Ecology* 344:23-34.

NMFS. 2005. Final Environmental Impact Statement: Pacific coast groundfish fishery management plan, essential fish habitat designation and minimization of adverse impacts. National Marine Fisheries Service, Seattle, Washington.

Comment 5: Geoff Shester, Oceana, oral comments, March 7, 2008: The Department's report did not include an analysis of key National Academy of Sciences impacts on soft sediment.

Response 5: The Department assumes that the "key National Academy of Sciences impact on soft sediment" is the report titled "Effects of Trawling and Dredging on Seafloor Habitat" published by the National Research Council, National Academy Press, Washington D.C. The Department reviewed this report and cited it (NRC 2002) in their draft report to the Commission.

Comment 6: Geoff Shester, Oceana, oral comments, March 7, 2008; Jim Ayers, Oceana, Letter, March 5, 2008: The Department's report did not include information on the recovery of coral.

Response 6: In their draft report to the Commission, the Department reviewed literature on habitat impacts to corals and cited it (e.g., Fosså et al. 2002 and Roberts et al. 2006).

Fosså, J. H., P. B. Mortensen, and D. M. Furevik. 2002. The deep-water coral *Lophelia pertusa* in Norwegian waters: distribution and fishery impacts. *Hydrobiologia* 471:1-12.

Roberts, J. M., A. J. Wheeler, and A. Freiwald. 2006. Reefs of the deep: the biology and geology of cold-water coral ecosystems. *Science* 312:543-547.

Comment 7: Mike McCorkle, Southern California Trawlers Association, written and oral comments, March 7, 2008: The value of the fishery is not accurate because it doesn't include retail value.

Response 7: The halibut trawl fishery revenue, as reported in the Department's draft supplemental report to the Commission titled "Review of the California Halibut Trawl Fishery in the California Halibut Trawl Grounds" dated February 20, 2008, is ex-vessel revenue adjusted for inflation to base year 2006 prices (pages 4-8, Table 1, and page 10, Appendix A and Appendix B). The ex-vessel revenue reported by the Department is accurate and took into consideration not only the target species, California halibut, but also other marketable species landed and sold with the target species.

While economic considerations in commercial fishery management are required considerations under the MLMA, there are no specific guidelines about how economic assessments are to be made. Since specific guidelines are absent, the Department follows economic impact guidelines as used in the analyses of proposed regulations, detailed in the California Trade and Commerce Agency, Regulation Review Unit's 1999 publication *Economic Impact Statement Guidelines*. These guidelines stipulate that the analyses of private sector costs pertain only to those businesses or individuals that are directly affected by the proposed regulations. As in the case of this proposed regulation, the parties directly affected are the commercial halibut trawl fishermen and not the retail seafood businesses. However, Mr. McCorkle is correct in pointing out that the ex-vessel revenue received by fishermen is much less than the final retail value of the fish they harvested.

The Department collects revenue information at the point of sale when the harvest moves from "boat to dock" and not at the ultimate retail point of sale, so the ex-vessel revenue is what is reported and used in our analyses. Nonetheless, ex-vessel sale of fish is merely the first in a series of processing and value-added steps which incrementally add to the value of the fish up to the point of retail sale. This is an important distinction, since often comparisons are attempted between revenue contributions from different fishing sectors, for example in an attempt to contrast commercial fishing ex-vessel values to recreational fishing values. However, these two values are not comparable, and represent an unequal pairing from two different industries. Since the monetary harvest output measure of commercial halibut trawl fishermen is their ex-vessel value, this was the impact measure used in the Department's economic impact analysis.

Comment 8: Mike McCorkle, Southern California Trawlers Association, written and oral comments, March 7, 2008: If you can make findings for three of the areas, you can make the same finding for the fourth. If the rationale for that one area in question is that "we don't use it very much," the direct consequence of that finding is that there isn't much impact, if any at all in that area.

Response 8: The Commission's decision to allow Area B to close was based on the best available information presented over the course of seven public meetings. Area B is

bisected with an extensive rock reef that can support complex biogenic habitats and giant kelp forests, and it has the highest percent (28 percent) by area of rocky substrate compared to 10 percent in Area A, three percent in Area C, and zero percent in Area D (Department Supplemental report submitted to the Commission titled "Review of California Halibut Trawl Fishery in the California Halibut Trawl Grounds," dated 2/20/08, pages 4 and 6). Trawl logbook data shows that fishing has been nominal in this area, thus Area B represented less than one percent of the regional revenue derived from the harvest of California halibut and other marketable species taken incidentally with the California halibut. Area B is not a significant revenue producing area for California halibut trawl fishermen in the region of Santa Barbara and Ventura Counties. Likewise, the contributions of Area B to California halibut trawl fishermen and total regional economic output is not significant; less than \$19 in ex-vessel revenue on average from 1997 to 2006 (Department Supplemental report submitted to the Commission titled "Review of California Halibut Trawl Fishery in the California Halibut Trawl Grounds," dated February 20, 2008, pages 4 and 6)

Comment 9: April Wakeman for Dallas Weaver, United Anglers, oral comments, March 7, 2008: The proposed closed areas within the CHTG are only generating an average of \$144,000 annually (acknowledged that the Department revised this figure to \$155,000). He recommends that trawlers targeting California halibut convert to hook-and-line gear, which generates a higher price/lb and a higher quality product, and also recommends aquaculture as another alternative to trawling.

Response 9: Section 8495 of Fish and Game Code directs the Commission to make a finding on whether or not to close specified areas within the CHTG based on the following criteria: the bottom trawl fishery for halibut is minimizing bycatch, is likely not damaging sea floor habitat, is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral, or other biogenic habitats. This comment is not relevant to these evaluation criteria. However, in response to the recommendation, there is currently no commercial aquaculture production of California halibut in the state of California to potentially replace trawl catch, and it is unlikely that a hook- and-line fishery could meet the demand for California halibut filled by the trawl fishery. Over the past ten years, statewide annual landings of California halibut by trawl gear have averaged 233 metric tons, while hook and line landings have averaged 66 metric tons (roughly 28 percent of trawl landings) (CFIS 2008). Additionally, the Department's Alternative Gear Development Program tested various gear types in the 1980's for suitability in targeting California halibut, and found otter trawl to have the highest efficiency in capturing California halibut among the various trawl and hook-and-line gears tested. Relatively poor catch results were obtained for the hook-and-line gears tested (bottom longline and troll) (Haseltine and Thornton 1990). Testimonies before the Commission from fishery participants in the California halibut trawl fishery also indicate that hook-and-line gear is not a viable economic replacement for otter trawl gear in this fishery.

Commercial Fisheries Information System. 2008. California Fisheries Information System. California Department of Fish and Game.

Haseltine, A.W. and S. Thornton. Alternative Gear Development Off Central California. 1990. CDFG Fish Bulletin 174: 341-357.

Comment 10: Tom Raftican, United Anglers, oral comments, March 7, 2008: Natural disturbances are limited to depths approximating wave heights and nearby river mouths, which are not applicable to areas slated for closure. Soft-bottom habitat is extremely valuable.

Response 10: In the Department's draft report to the Commission titled "Information Concerning the California Halibut Trawl Fishery off Southern California" dated January 15, 2008, to the Commission, the Department documented that the CHTG may be impacted by natural disturbances such as the flood of 1969 which exported a collective flux of at least 100 million tons into the Santa Barbara Channel (page 24, Figure 8).

Comment 11: Tom Raftican, United Anglers, oral comments, March 7, 2008: The industry has not presented any data to support a finding that halibut trawling will not adversely affect ecosystem health.

Response 11: Comment noted. In addition, at the Commission's April 2007 meeting, the Department indicated that an ecosystem impact study was prohibitive under the pending timeframe and resource constraints in which they were operating under. However, in the Department's draft report dated January 15, 2008, to the Commission, a list of current state and federal management measures were provided that may collectively foster a sustainable bottom trawl fishery inside and outside of the CHTG and indirectly promote a healthy ecosystem by reducing potential fishery impacts on the system (page 25).

Comment 12: Tom Raftican, United Anglers, oral comments, March 7, 2008: There is not adequate data to support a finding that halibut trawling is not impeding reasonable restoration of kelp, coral, or other biogenic habitats.

Response 12: In the Department's draft report to the Commission titled "Information Concerning the California Halibut Trawl Fishery off Southern California" dated January 15, 2008, to the Commission, the Department noted that there is a variety of kelp, coral and other biogenic habitats that occur in waters within or adjacent to the CHTG (page 28, Figure 9). Historical aerial surveys conducted by the Department did not show any canopy forming kelp growing in the CHTG (pages 25-26, Table 10). Kelp restoration projects have taken place near the CHTG, and they were reported as being successful and any impacts following restoration efforts were not attributed to bottom trawling

activity (page 26). The Department indicated in their report that there is not a spatially comprehensive description of the occurrence of coral or coral like species (pages 26-28, Figure 9). Nearly all of the coral taxa expected to occur in the CHTG require hard substrate for attachment, and trawl effort data indicates that the California halibut trawl fleet in the CHTG generally avoids hard substrate when targeting California halibut. However, direct study of the impacts of bottom trawling in the CHTG has not been done.

Comment 13: Gary Burke, oral comments, March 7, 2008: Supported keeping the areas open to halibut trawling. Stated that 95 percent of the bycatch is thrown back alive.

Response 13: Support noted. Comments noted.

Comment 14: Jesus Aviles, oral comments, March 7, 2008: Stated that his business and that of the family-owned restaurants he sells to will be adversely impacted by closing the areas.

Response 14: Comments noted.

Comment 15: Jeff Hepp, oral comments, March 7, 2008: Stated that SB1459 already closed other areas, resulting in a loss of 60 percent of his income. Supported keeping the areas open.

Response 15: Comments noted.

Comment 16: Mick Kronman, oral comments, March 7, 2008: Stated that this is a small fishery, using small boats, whose impacts are no where close to the impacts of natural events that scour the sea floor and uncover shipwrecks and pipelines. He stated that the halibut trawl fishery is the cornerstone of the Santa Barbara working harbor and that closures would have irrevocable impacts to the community.

Response 16: Comment noted. In addition, see Responses 10 and 12.

Comment 17: Morgan Castagnola, oral comments, March 7, 2008: The bycatch study required that they fish areas not normally fished. If he were really fishing he would move to a new area if there were no halibut in the trawl area, but for the study, he had to complete four tows in the same areas. He emphasized that if he caught only one other fish, and no halibut, it would be 100 percent bycatch. He stated that on the first day of the study, the bycatch fit into a Ziploc sandwich bag.

Response 17: Comments noted.

Comment 18: Kaitilin Gaffney, Ocean Conservancy, Letter, March 5, 2008: The average national discards-to-landings ratio for all US fisheries is 0.28. Given that the halibut trawl fishery results in a discards-to-landings ratio of 1.56, the conclusion cannot be made that the halibut trawl fishery minimizes bycatch.

Response 18: The average national discards-to-landings ratio of 0.28 represents an average for the 27 major fisheries in the US, which landed a total of 3.7 million metric tons of fish and discarded 1.06 million metric tons in 2002/2003 (Harrington et al. 2005). Discard ratios are a useful metric for comparing and describing bycatch discards of various large-scale fisheries, however it is not a complete measure of a fisheries bycatch. For example, the national discards-to-landings ratio of 0.28 for the 27 major fisheries in the US (Harrington et al. 2005) equates to an average of 38,500 metric tons of discards per fishery each year, while the CHTG fishery with a discard rate of 1.56 results in an estimated average of 42 metric tons of discards per year. In addition, the authors of the paper which Kaitilin Gaffney cites, (Harrington et al. 2005) state that in many cases the estimates (discard ratios) presented in their paper are underestimates of the actual level of discarding because many discarded species which are not commercially valuable are not recorded. The CHTG halibut trawl fishery discard rate that Kaitilin Gaffney refers to includes all organisms discarded.

Harrington, J.M., R.A. Myers, A. A. Rosenberg. 2005. Wasted fishery resources: discarded by-catch in the USA. *Fish and Fisheries* 6: 350-361

Comment 19: Kaitilin Gaffney, Ocean Conservancy, Letter, March 5, 2008: Any scientific study purporting to address sea floor habitat impacts cannot rely simply on a video image.

Response 19: See Response 4.

Comment 20: Kaitilin Gaffney, Ocean Conservancy, Letter, March 5, 2008: There is nothing to support the finding that halibut trawling is not adversely affecting ecosystem health.

Response 20: See Response 11.

Comment 21: Kaitilin Gaffney, Ocean Conservancy, Letter, March 5, 2008: There is not adequate data to support a finding that halibut trawling is not impeding reasonable restoration of kelp, coral, or other biogenic habitats.

Response 21: See Response 12.

Comment 22: Karen Garrison, NRDC, Letter, March 5, 2008: Expressed concerns about the differences in bycatch and discard rates in the Collaborative Research Bycatch Study Report, the West Coast Groundfish Observer program, and the DFG report.

Response 22: The Department conducted its own separate analysis of the CHTG bycatch data and did not provide comments or analysis to the Southern California Trawlers Association for the data presented in the Collaborative Research Bycatch Study Report. The difference in bycatch and discard rates presented in the two reports (DFG report and the Collaborative Research Bycatch Study Report) arises from the different ways in which data were analyzed and presented. To make the CHTG bycatch study data comparable to the summarized West Coast Groundfish Observer data in Hastie (2005), all invertebrates and non-federally managed fish species were excluded from the comparison and species were grouped into the four categories (California halibut, all federal groundfish, flatfish, and rockfish) reported in Hastie (2005). In addition, due to differences in tow duration, the bycatch rate was standardized to pounds-per-hour. Average tow duration for limited-entry vessels targeting California halibut (2001 to 2004) in federal waters was 3.7 hours, which was longer than the 30 minute tows used in the CHTG study. In addition, see Response 3.

Hastie, J. 2005. Summary of observed groundfish bycatch by groundfish limited-entry vessels targeting California halibut. National Marine Fisheries Service, Seattle, Washington.

Comment 23: Karen Garrison, NRDC, Letter, March 5, 2008: Suggested that the Commission's decision be delayed until results of the MLPA survey work become available.

Response 23: The Commission was required by Section 8495 of Fish and Game Code to make a finding of whether or not to allow bottom trawling in certain areas of the CHTG by April 1, 2008. However, Commencing January 1, 2008, the Commission shall review information every three years from the federal groundfish observer program and other available research and monitoring information it determines relevant, and shall close any areas within the CHTG if it finds the use of trawl gear is not meeting the fishery performance criteria listed in Section 8495 of Fish and Game Code.

II. Notice of Addition of Document to Rulemaking File.

On June 16, 2008, pursuant to Government Code Section 11347.1, the Commission mailed a Notice of the Addition of "Review of California Halibut Trawl Fishery in the California Halibut Trawl Grounds - Draft Supplemental Report to the California Fish and Game Commission February 20, 2008" to the rulemaking file to

those persons identified in subsection (b) of Government Code Section 11347.1, and also posted the notice on its web site. No comments were received on the document.

III. Explanation of the Differences in the Description of Proposed Closure Area D.

The description of the proposed Closure Area D in Fish and Game Code (FGC) subsection 8495(c)(1)(C) overlaps two areas previously closed by FGC subsections 8495(b)(3) and 8495(b)(4). Because the 2005 closures cannot be reopened by the Commission's decision to leave Area D open, the description of Area D was rewritten to include only the area between the western boundary of the IMO Vessel Traffic safety zone on NOAA/NOS Chart 18725 in Hueneme Canyon and a line extending true south (180°) from Laguna Point [§124(a)(1)(C), Title 14, CCR]. This area lies between the closures described in FGC subsections 8495(b)(3) and 8495(b)(4).